



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNR MNSD OPR CNR

Introduction

This hearing was convened in response to applications by both parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) pursuant to section 46 of the *Act*.

The landlord requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55 of the *Act*;
- a Monetary Order for unpaid rent or utilities pursuant to section 67 of the *Act*.
- authorization to retain the security deposit pursuant to section 72 of the *Act*; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Only the agents for the landlord, A.M. and K.P., participated in the conference call hearing. Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Agents for the landlord testified that a 10 Day Notice for Unpaid Rent or Utilities (“10 Day Notice”) was posted tenant’s door on February 23, 2017. Pursuant to sections 88 and 90 of the *Act*, I find the tenant was served with the 10 Day notice on February 26, 2017.

On March 9, 2017, the landlord handed a copy of the tenant’s application for Dispute Resolution Package and Monetary Order to the tenant’s adult son who is currently occupying the rental unit. Pursuant to sections 89 and 90 of the *Act*, the tenant is deemed to have been served with the documents on March 9, 2017.

The landlord confirmed receipt of the tenant’s application for dispute resolution.

At the outset of the hearing, agents for the landlord stated that they wished to amend the landlord's application for a Monetary Order to reflect unpaid rent for February and March 2017. Pursuant to section 64(3)(c) I amend the landlord's application Monetary Order to reflect unpaid rent for this time period.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent or utilities?

Can the landlord keep the security deposit to be put against the Monetary Order?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

Agents for the landlord explained that the tenant has occupied the rental unit since December 2013. Rent is \$745.00 per month and a security deposit of \$372.50 continues to be held by the landlord.

Undisputed testimony was provided at the hearing by the agents that the landlord is seeking an Order of Possession for unpaid rent as well as Monetary Order of \$4,215.00. This amount requested represents unpaid rent for January to March 2017, as well as the bank charge associated with a returned check from January 2017 and unpaid utilities.

Item	
Unpaid rent for January 2017	\$745.00
Unpaid rent for February 2017	745.00
Unpaid rent for March 2017	745.00
Unpaid utilities	1,980.00
Total =	\$4,215.00

Analysis – Order of Possession

Section 55(1) of the Act reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on the 10 Day Notice entered as written evidence and the landlord's sworn testimony, I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. The tenant's failure to attend this hearing and present evidence relating to his application leads me to order that his application to cancel the 10 Day Notice is dismissed without liberty to reapply.

Based on my decision to dismiss the tenant's application for dispute resolution and my finding that the landlord's 10 Day Notice complies with section 52 of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, March 7, 2017, and the landlord is entitled to an Order of Possession.

Analysis – Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to their claim for a monetary award.

The agents for the landlord provided undisputed testimony that the tenant did not pay rent for the time period requested. While I found the agents to be credible witnesses, no evidence was provided concerning the unpaid utilities or the fee incurred concerning returned rent for January 2017. I will therefore grant them a Monetary Order only for the unpaid rent that was requested.

The landlord has applied pursuant to section 38 of the *Act* to keep all of the security deposit as a relief against monies owed. Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the security deposit of \$372.50 to be put against the Monetary Order.

As the landlord was successful in their application, they may recoup the \$100.00 filing fee from the tenant pursuant to section 72 of the *Act*.

Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I am making a Monetary Order of \$1,962.50.00 in favour of the landlord as follows:

Item	Amount
Unpaid rent for January 2017	\$745.00
Unpaid rent for February 2017	745.00
Unpaid rent for March 2017	745.00
Filing Fee	100.00
Less Security Deposit	(-372.50)
Total =	\$1,962.50

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 24, 2017

Residential Tenancy Branch